

Agreement for Works in the Road Corridor



Agreement

relating to works in the road corridor at

_____ (Location)

Auckland Transport (AT)

and

_____ (Developer)

Date:

This **Agreement** is made on _____ 20__

between (1) **Auckland Transport (AT)**

and (2) _____ (**Developer**)

Introduction

- A. AT is the road controlling authority for the Road.
- B. The Developer proposes to engage the Contractor to undertake certain works for the Developer in the Road. The Developer is not a utility operator under the Utilities Access Act 2010 and the works are to be vested in a utility operator by the Developer.
- C. AT authorises the Developer to undertake the Works in the Road in accordance with the provisions of this Agreement.

It is agreed

1. Definitions

1.1 Definitions

In this Agreement unless inconsistent with the context:

Access Fee means any amount stated or described in a schedule of fees or charges (or similar) applicable to works in a road corridor issued by AT from time to time, together with any other costs, charges or fees referred to in item 11 of schedule 1, and which may include liquidated damages for unauthorised occupation, disruption, damage or use of all or part of a road;

Adverse Condition includes contamination, pollution, fire, flooding, geotechnical instability, destruction or damage or other condition affecting all or part of the Licensed Area or the Road;

Approval means any resource consent under the Resource Management Act 1991, any building consent under the Building Act 2004 and any other consent or approval under any other law or from any relevant Authority required in connection with the Works, including (for the avoidance of doubt) any approval required from or issued by AT as a road controlling authority (including any Work Access Permit);

AT Requirements means the requirements of AT applicable to the Works or the Licensed Area as issued by AT from time to time or as stated in the applicable Works Access Permit or item 12 of schedule 1;

Authority means any local authority, government or other authority having jurisdiction or authority over, or in relation to, all or part of the Works or the Licensed Area and includes Utility Operators;

Cancellation Notice has the meaning given to that term in clause 9.1;

Code means the National Code of Practice for Utility Operators' Access to Transport Corridors under the Utilities Access Act 2010;

Completion means, in relation to the Works, that stage in the undertaking and completion of the Works when:

- (a) the Works have been properly and effectively completed in accordance with the Final Design and all applicable Approvals, including obtaining all certificates or other documentation required for the Works under any applicable law or this Agreement, including:
 - (i) a code compliance certificate under the Building Act 2004 ;
 - (ii) a notice of conformance referred to in the Code; and
- (b) the Developer has provided AT with complete as-built documentation and other information recording the Design for the completed Works and a copy of the practical completion certificate (or equivalent) issued by the engineer under the construction contract for the Works; and
- (c) any plant, equipment, materials, waste or rubbish in relation to the Works and not forming part of the Licensed Area or the Improvements has been completely removed from the Licensed Area and any damage caused by the Works or such removal has been made good and the Licensed Area has otherwise been reinstated to the condition reasonably required by AT (subject to the existence of the Licensed Area and the Improvements); and
- (d) AT is otherwise satisfied, acting reasonably, that the Works have been properly and effectively completed in accordance with the requirements of this Agreement;

Construction Commencement Date means the date specified in item 5 of schedule 1;

Construction Period means the period specified in item 4 of schedule 1;

Contractor means the person engaged by the Developer to undertake and complete the relevant Works that has been approved by AT as the Contractor for the Works for the purposes of this Agreement;

Corridor Access Request means a Corridor Access Request referred to in the Code as applied to the Developer and the Works under this Agreement;

Date of Completion means the date of Completion of the Works;

Default Rate means the default interest rate which is equivalent to the interest rate charged by the Inland Revenue Department in unpaid tax under the Tax Administration Act 1994 during the period for which the default rate is payable, plus 5% per annum;

Defects Notification Period means the period specified in item 8 of schedule 1;

Design means the documents and other information recording the design (including the location and specifications) for the Works;

Developer's Agents means each contractor, subcontractor, agent, employee, licensee or invitee of the Developer and any other person claiming through or under the Developer;

Final Construction Commencement Date means the date specified in item 6 of schedule 1, being final date that the construction of the Works is to be commenced by the Developer;

Final Date for Completion means the date specified in item 7 of schedule 1, being the final date of for Completion of the Works;

Final Design means the final Design accepted (or not objected to) by AT for the construction stage of the Works under clause 4.2(c)(i);

Final Vesting Date means the date specified in item 10 of schedule 1;

Improvements means the improvements made to the Licensed Area by the Developer as a result of the Works;

Insolvency Event means, in relation to the Developer:

- (a) the presentation of an application for its liquidation or removal from the Companies Register that AT considers (acting reasonably) is not frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official to that person of all or a material part of its assets;
- (d) the suspension or threatened suspension by that person of the payment of its undisputed debts;
- (e) cessation by that person of a whole or any relevant part of its business; or
- (f) the enforcement of any security against the whole or a substantial part of its assets;

Licence means the licence granted to the Developer under clause 4.4, the terms of which are set out in schedule 3 and the other provisions of this Agreement;

Licensed Area means the area referred to in item 3 of schedule 1;

Make Good Requirements means the requirement on the Developer to decommission and completely remove all or part of the Works (as required by AT), from the Licensed Area and make good all damage caused to the Licensed Area and (if applicable) the Road as a result of such removal;

Permitted Use means the use specified in clause 4.4;

Required Insurances means the insurances required to be obtained and maintained by the Developer under this Agreement;

Road has the meaning given to it in item 1 of schedule 1;

Utilities means utilities and services (and the conduits, connections and the plant, equipment and materials for them) located on, in or under the Licensed Area and includes Utility Structures under the Code;

Utility Operator has the meaning given to that term in the Code;

Work Access Permit means a Work Access Permit referred to in the Code as applied to the Developer and the Works under this Agreement;

Working Day means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and the Provincial Anniversary Day of Auckland and for clarity, the days observed as Waitangi Day or Anzac Day under section 45A of the Holidays Act 2003; and
- (b) a day in the period commencing on (and including) the 24th day of December in any year and ending on (and including) the 5th day of January in the following year; and

Works means the Utilities works to be undertaken by the Developer under this Agreement in accordance with the Approved Design during the Construction Period in relation to the Licensed Area and includes any replacement, modification or maintenance of such works.

1.2 Interpretation

In this Agreement, unless context requires otherwise:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of, a schedule to or an annexure to this Agreement, as the case may be;
- (b) words importing one gender include any other gender;
- (c) words importing the singular include the plural and vice versa;
- (d) the word "includes" or "including" is deemed to be followed by the words "without limitation";
- (e) a reference to anything (including a right, obligation or concept) is to any part of it or all of it, as applicable;
- (f) a reference to:
 - (i) a party to this Agreement includes that party's successors, executors, administrators and permitted assigns;
 - (ii) a person includes a partnership and also a body of persons, whether corporate or unincorporated, and any successors, executors, administrators and permitted assigns of such person;
- (g) any agreement to be performed or observed by two or more persons binds those persons jointly and severally;
- (h) any agreement not to do a thing also constitutes an agreement not to suffer, permit or cause the thing to be done;
- (i) a reference to a statute:
 - (i) includes all regulations, bylaws, orders and notices made or issued under that statute; and
 - (ii) is a reference to the statute as amended, consolidated or replaced from time to time.

Headings are included for ease of reference only and do not affect construction or interpretation of this Agreement.

2. Approvals

2.1 Status of Developer

The Developer acknowledges and accepts that:

- (a) it is not a Utility Operator under the Code and does not have any right to enter or undertake any works or other activities within the Road (and will not have an automatic right of access under this Agreement) and, as a result:
 - (i) the Developer requires the authorisation of AT to enter into the Road and to undertake and maintain the Works;
 - (ii) any right of the Developer under this Agreement is subject to the rights and obligations of AT and Utility Operators under the Code or at law;
 - (iii) acknowledges and accepts that AT cannot, and is not obliged to, require any Utility Operator to comply with the Code in relation to the Developer or the Works;
 - (iv) to the extent that the Code is applied by this Agreement, the provisions of this Agreement prevail over the provisions of the Code;
- (b) it is responsible for obtaining and complying with, and bears all risk in relation to, any Approval required for the Works, including the maintenance of the Works;
- (c) the entry into of this Agreement by AT does not constitute approval or other acceptance of the Works or access to the Road by AT in its capacity as the road controlling authority or otherwise.

2.2 Utilities

The Developer is responsible for:

- (a) determining the location of all relevant Utilities; and
- (b) obtaining the approval of any relevant Authority or other person required in relation to:
 - (i) the Works to the extent the Utilities will or might be affected by the Works; or
 - (ii) the relocation of the Utilities that are or might be affected by the Works to another location to the extent required to facilitate the undertaking and completion of the Works.

2.3 Condition of the road corridor

The Developer:

- (a) will provide AT with full details of any work in relation to Utilities upon being notified of, or agreeing, the same with the relevant person or Authority;
- (b) acknowledges and accepts that the Developer bears all risk in relation to all or any of:
 - (i) the matters referred to in clauses 2.1 and 2.2;

- (ii) without limiting clause 7.1 (Adverse conditions), the suitability and condition of the Licensed Area for the undertaking and completion of the Works and the use of the Licensed Area; and
- (iii) the existence and condition of any Utilities in, on or around the Licensed Area.

2.4 Developer's responsibility for costs

Without limiting any other provision of this Agreement, the Developer:

- (a) acknowledges and accepts that it is responsible for the cost of undertaking and completing the Works, including maintenance of the Works;
- (b) will not make a claim against AT for, and the Developer releases AT from, any cost, expense, loss or liability suffered or incurred by the Developer in connection with the matters referred to in subclause (a) or clauses 2.1 to 2.4.

2.5 Contractor – approval

The Developer is required, as a condition to making a Corridor Access Request for the Works, to:

- (a) obtain the approval of AT (not to be unreasonably withheld) of the person that will be the Contractor for the Works; and
- (b) provide to AT an undertaking from the Contractor in favour of AT that the Contractor will comply with the obligations of the Contractor under, and is subject to the provisions of, this Agreement in relation to the Works, in the form in schedule 4.

The Developer will procure the Contractor to comply with the provisions of this Agreement to the extent applicable to the Contractor and is liable for any act or omission of the Contractor (and any other contractor or agent of the Developer) as if it was an act or omission of the Developer.

2.6 Vesting of works

The Developer will as soon as possible after Completion of the Works but no later than the Final Vesting Date, vest or otherwise transfer, or agree to the vesting or transfer of, unencumbered ownership of the Improvements to the Utility Operator specified by AT at no cost to that Utility Operator on the terms and conditions specified by the Utility Operator (unless agreed otherwise by that Utility Operator).

The Developer and the Contractor each:

- (a) acknowledges and accepts that AT may assign or novate any right, remedy, obligation or liability of AT under or in connection with this Agreement or the Works to that Utility Operator; and
- (b) AT may cancel this Agreement if the Developer does not comply with this clause 2.6;
- (c) without limiting clause 9.3 (Cancellation and remedies – consequences), irrevocably and unconditionally appoints AT as its attorney to execute any instrument or do anything required to effect such vesting or transfer, or assignment or novation, if not completed by the Developer on or before the Final Vesting Date in accordance with this clause 2.6.

3. Design

3.1 General approach

The Developer will:

- (a) ensure that AT is involved in the preparation of the Design to the extent required by AT; and
- (b) provide copies of each draft and final Design to AT as it is developed by or on behalf of the Developer and otherwise in accordance with clause 3.3(a).

3.2 Design standards

The Developer will ensure that the Design:

- (a) complies with the AT Requirements;
- (b) conforms to New Zealand Construction Industry Council Design Documentation Guidelines and the Code;
- (c) is consistent with each Approved Design, except to the extent expressly agreed otherwise by AT; and
- (d) is prepared and developed:
 - (i) to standards of good engineering and technical practice and consistent with good industry practice; and
 - (ii) in a manner that otherwise complies with the requirements of this Agreement.

3.3 Supporting documentation

The Developer will provide at the time that each Design is provided to AT under this clause:

- (a) evidence to the satisfaction of AT that the relevant Design complies with the requirements of this Agreement; and
- (b) adequate information to enable AT to make any design, technical or similar decisions including marked-up and clean versions of any re-issued Design.

3.4 Non-objection and no liability

Notwithstanding any other provision in this Agreement, the Developer and the Contractor each accepts that:

- (a) AT may, at its discretion, satisfy a requirement under this Agreement for the approval or acceptance by AT of a Design by providing a notice to the effect that it does not object to that Design, and any such reference to approval or acceptance includes a reference to such non-objection by AT; and
- (b) the involvement of AT in the preparation, development or modification of any Design, or its review or acceptance (or non-objection) of any Design, does not limit or affect the obligations of the Developer, or prejudice any right or remedy of AT, under or in connection with this Agreement or at law, other than satisfying an obligation of the

Developer under this Agreement to provide such Design, or obtain such acceptance from, AT (as the case may be).

4. Access and licence

4.1 Corridor access request

For the purposes of applying for and obtaining access to the Road for the construction or maintenance of the Works, the relevant provisions of the Code will be applied by AT to the Developer and the Works as if the Developer was a “Utility Operator” and the Works were “Works” and “Utility Structures” under the Code, so that the Developer is required to:

- (a) obtain from AT a Works Access Permit through the Corridor Access Request process under the Code; and
- (b) comply with the other requirements of the Code in relation to the Works including maintenance of the Works, except that:
 - (i) the conditions that AT, as Corridor Manager, may apply to the works in the Transport Corridor are not restricted to Reasonable Conditions, as described in Code;
 - (ii) the Developer does not have a right of access to a Transport Corridor for the purposes of the Code;
 - (iii) AT is not liable to the Developer for any cost or other amount under any provision of the Code and the Developer will be responsible for any such cost or other amount;
 - (iv) under clause 5 of section 4.3.1 (Lodgement of the CAR) of the Code, the minimum period for submissions of a CAR for the Works is 15 Working Days;
 - (v) the Developer will, in relation to Utility Operators and AT as Corridor Manager, comply with the Code as if it was a “Utility Operator” and the Works were “Works” and “Utility Structures” under the Code.

4.2 Conditions precedent to the grant of the licence

The Licence does not commence, and the Developer and the Contractor may not access the Road for the purposes of the Works or commence the Works or any other activities related to the Works in the Licensed Area, until the Construction Commencement Date, and

- (a) AT has received:
 - (i) the Access Fee, to the extent due and payable as at commencement of the Works; and
 - (ii) any bond required under this Agreement and evidence of the Required Insurance to the satisfaction of AT;
 - (iii) written confirmation from the Developer that each person (including any lessee or occupier of land adjoining the Licensed Area) has agreed to the cessation or reduction (as described in the Corridor Access Request) of access to the Road during the undertaking of the Works;

- (b) the Developer has submitted to AT a Corridor Access Request under the Code for the Works and AT has issued to the Developer a Work Access Permit as described in the Code for the Works as contemplated in clause 4.1;
- (c) AT has provided to the Developer written confirmation that AT accepts (or does not object to):
 - (i) the Final Design;
 - (ii) a producer statement certifying the design and suitability of the Works within the Licensed Area as described in the proposed Final Design;
 - (iii) a programme of Works, which will include a quality plan and traffic management plan (each as described in the Code), for the Works, -

and then notifying AT that the Developer proposes to commence each Works by no later than the Final Works Commencement Date, failing which AT may (at any time before all of the conditions in this clause 4.2 have been satisfied or otherwise waived) cancel this Agreement by notice to the Developer.

4.3 **Benefit of conditions**

The parties acknowledge that the conditions in clause 4.2 are for the sole benefit of AT and may at any time be waived (conditionally, in whole or in part) by AT at its discretion by notice to the Developer.

4.4 **Grant of the licence**

Subject to clause 4.2 and the Developer complying with this Agreement, AT grants to the Developer a non-exclusive licence of the Licensed Area, on the terms and conditions in schedule 3 and the other provisions of this Agreement, for the Construction Period for the sole purpose of the Works being undertaken and completed by the Developer in accordance with this Agreement.

5. **Bond**

5.1 **Bond**

In order to secure the obligations and liabilities of the Developer and the Contractor under or in connection with this Agreement or the Works, the Developer will provide to AT, no later than 5 Working Days before commencement of construction of the Works in the Road, a bond which will be:

- (a) for the amount specified in item 9 of schedule 1 as the amount of the bond;
- (b) for a term that does not expire before the date or term specified in item 9 of schedule 1 as the minimum term or expiry date (as applicable) for the bond;
- (c) provided by way of an on-demand bond from a New Zealand registered bank with a branch in Auckland and otherwise acceptable to AT in the form specified in schedule 3.

5.2 Recourse

AT may have recourse to the bond for any cost, expense, loss or liability suffered or incurred by AT as a result of any default by the Developer or the Contractor under or in connection with this Agreement.

5.3 Replacement and return

The Developer may procure a bond to replace an existing bond with the approval of AT (not to be unreasonably withheld). AT will return the bond to the Developer no later than 1 month after expiry of the Defects Notification Period.

6. Works

6.1 Standards

The Developer will ensure that the Works are undertaken and completed:

- (a) in accordance with all applicable laws and the Approvals, the Final Design, the Code, the AT Requirements and the other requirements of this Agreement;
- (b) in a diligent and timely manner and a proper, professional and workmanlike manner;
- (c) in a manner which causes no damage or nuisance to, and which minimises disturbance and inconvenience to, users of the Licensed Area and the general public; and
- (d) in accordance with any procedures or guidelines issued by AT and notified to the Developer at any time and from time to time.

6.2 Completion

The Developer will use all reasonable endeavours to cause the Works to reach Completion as soon as reasonably practicable after the commencement of the Construction Period. If Completion does not occur on or before the Final Date for Completion or the Developer does not maintain access to the Licensed Area required for any third party, then AT may at its option:

- (a) step-in and either undertake and complete the Works itself, remove the Works and undertake any required remediation including reinstatement of the Licensed Area or re-instate such access to the Licensed Area for a third party; or
- (b) cancel this Agreement at no cost to AT at any time prior to the Works reaching Completion.

6.3 Cost

The Developer will, if demanded by AT, immediately reimburse AT for any cost or expense incurred by AT in exercising its rights under clause 6.2.

6.4 Delays

To the extent that the completion of the Works is delayed as a direct result of default by AT under this Agreement or a natural disaster and the Developer can prove to the satisfaction AT that the relevant delay has caused a delay to the critical path of the programme for the

Works, then the Final Date for Completion may be extended by the period of the relevant delay if AT considers it appropriate.

6.5 Defects

Without limiting any right or remedy of AT under or in connection with this Agreement or at law, the Developer and the Contractor (as required by AT) will rectify, promptly and at the cost of the Developer or Contractor or both (as determined by AT), any defect in the Works occurring during the Defects Notification Period. If the Developer and the Contractor do not rectify any such defect promptly, then:

- (a) AT may (either itself or through a contractor) rectify the defect; and
- (b) the Developer or the Contractor (as determined by AT) will pay on demand any cost or expense incurred by AT in connection with such rectification.

7. Environment, safety and compliance

7.1 Adverse conditions

The Developer acknowledges and accepts that, despite anything to the contrary in this Agreement and to the maximum extent permitted by law, it is solely responsible for and bears all risk for any Adverse Condition in, on or around the Licensed Area and any Adverse Condition in connection with all or any of:

- (a) the undertaking or completion of the Works; and
- (b) the existence, use or maintenance of the Works.

7.2 Health and safety

- (a) The Developer will at all times comply with the Health and Safety at Work Act 2015 (HSWA) in relation to the Licensed Area, including:
 - (i) ensuring, so far as is reasonably practicable, that the Licensed Area, and the means of entering and exiting the Licensed Area, are without risks to the health and safety of any person;
 - (ii) ensuring that all significant risks and hazards on the Licensed Area are identified, and eliminated where reasonably practicable or minimised where elimination is not reasonably practicable;
 - (iii) establishing and maintaining a documented health and safety management plan, which the Developer will periodically review, to ensure the health and safety of workers and any other person on the Licensed Area;
 - (iv) not doing anything that will or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSWA against AT, Auckland Council, the Developer or its contractors or subcontractors; and
 - (v) conforming with any code of practice and regulations promulgated in relation to the particular work being done by the Developer on the Licensed Area.

- (b) The Developer will, so far as is reasonably practicable, consult, cooperate with, and co-ordinate activities with AT on health and safety matters relating to all or any of the Licensed Area or the Works.
- (c) The Developer acknowledges and accepts that, at any time during the Term, AT may immediately suspend the Developer's right to access and use the Licensed Area for the relevant Permitted Use by giving notice to the Developer if AT considers that there is or is likely to be an imminent risk to the health, safety or security of any person.
- (d) The Developer will effectively manage any of the Developer's Agents engaged by the Developer to perform any of the obligations of the Developer (including the undertaking and completion of the Works) or to exercise any of the rights of the Developer under this Agreement by ensuring that such Developer's Agents:
 - (i) are suitably qualified and trained and have the requisite skills, expertise, qualifications and experience to perform the relevant obligation safely; and
 - (ii) will undertake their respective duties with reasonable care, skill and diligence.

8. Insurance

8.1 Developer to hold public liability insurance

At all times during the Term, the Developer will hold and maintain a public liability insurance policy applicable to the Licensed Area, with a reputable insurer approved by AT, noting AT as an insured and for no less than \$1,000,000.

8.2 Construction insurance

The Developer will (or the Developer will procure that the Contractor) hold and maintain construction insurance [for at least the aggregate contract price of the Works and the estimated cost of reinstatement of the Licensed Area] with a reputable insurer (such cover and insurer to be approved by AT) in relation to the Works for the duration of the Construction Period.

8.3 Evidence of insurance

The Developer will provide AT with a certificate of currency and confirmation of payment of premiums for the insurance policy referred to in each of clause 8.1 and 8.2 as and when AT may from time to time require.

8.4 AT has no insurance obligations

The parties acknowledge that AT is not required to and may not insure the Licensed Area (including, for the avoidance of doubt, any structures, fixtures, fittings, equipment or other improvements within the Licensed Area).

8.5 Indemnity

To the maximum extent permitted by law, the Developer indemnifies AT and Auckland Council (in its capacity as owner of the Road) from and against any cost, expense, loss or liability that AT suffers or incurs in relation to or in connection with all or any of:

- (a) a default under this Agreement (including for the avoidance of doubt, the Licence), or any law or Approval in connection with the Works, by the Developer or the Contractor;

- (b) a negligent or wilful act or omission of the Developer or the Contractor in connection with the Works;
- (c) the undertaking (which in this Agreement includes design) or completion, or (to the extent that the relevant Utility Operator is not responsible) the operation or maintenance, of the Works; or
- (d) the use of the Licensed Area other than for the Permitted Use.

8.6 No warranty by AT

The Developer and the Contractor each acknowledges and accepts that, except as expressly provided in this Agreement, no representation, warranty, undertaking or other assurance (whether oral, written or otherwise) has been or is made by AT in any way in relation to or in connection with all or any part of the Road, the Licensed Area, the Works, this Agreement or any related matter.

9. Cancellation and remedies

9.1 Default

AT may immediately cancel this Agreement by notice to the Developer (**Cancellation Notice**) if:

- (a) any amount payable by the Developer to AT is in arrears and unpaid for 10 Working Days following the date of demand by AT;
- (b) the Developer or the Contractor do not comply with its obligations under this Agreement in any material respect and the Developer has failed to remedy that breach within 10 Working Days of receiving notice of the default from AT; or
- (c) an Insolvency Event occurs in relation to the Developer.

AT may in any Cancellation Notice cancel this Agreement immediately or on the date specified in the Cancellation Notice.

9.2 Remedy

AT may elect to remedy at any time without notice any default by the Developer or the Contractor under this Agreement and whenever AT elects to, all reasonable costs and expenses incurred by AT (including legal costs and expenses) in remedying such default will be paid by the Developer to AT immediately upon demand.

9.3 Consequences

If this Agreement:

- (a) is cancelled by AT during the Construction Period or prior to the vesting or transfer to the Works under clause 2.6 (Vesting of works) (whichever is later), then AT may require the Developer to remove:
 - (i) any partially or fully completed Works from the Licensed Area or (if applicable) the Road; and
 - (ii) plant, equipment or any other improvements, materials, waste or rubbish relating to the Works from the Licensed Area or (if applicable) the Road, -

and satisfy the Make Good Requirements to the satisfaction of AT prior to the date of cancellation; or

- (b) is cancelled by AT as a result of the Developer not complying with clause 2.6 (Vesting of works), then (without limiting the rights of AT under clause 2.6):
 - (i) the Developer will leave the Works in situ and, if required by AT, transfer ownership and possession of the Works to AT, or a Utility Operator specified by AT, at no cost to the transferee, prior to the date of cancellation; or
 - (ii) AT may require the Developer to satisfy the Make Good Requirements prior to the date of cancellation.

9.4 **Failure to make good**

If the Developer has not satisfied the Make Good Requirements in accordance with this Agreement, then AT may satisfy the Make Good Requirements and the Developer is responsible for, and will pay to AT within 10 Working Days of receipt of a tax invoice, any cost or expense incurred by AT in performing any Make Good Requirements.

9.5 **Other consequences**

If this Agreement expires or is cancelled under clause 9.1, then the expiry or cancellation of this Agreement:

- (a) will not affect any provisions of this Agreement which are intended to continue after expiry or cancellation and will also be without prejudice to any claim by either party against the other party arising out of any breach or non-performance by that party of any obligations assumed by or imposed on that party under this Agreement at any time prior to the expiry or cancellation of this Agreement; and
- (b) will have the effect of:
 - (i) for the avoidance of doubt, cancelling the Licence; and
 - (ii) rendering all amounts owing to AT under or in connection with this Agreement immediately due and payable by the Developer.

9.6 **Default interest**

Without prejudice to the other right or remedy of AT, if the Access Fee or any other amount payable under this Agreement by the Developer, is in arrears and unpaid for 10 Working Days after the due date for payment (whether formally demanded or not), then the Developer will pay to AT interest on the overdue amount at the Default Rate and calculated from the due date to the date of payment and AT may recover such interest as if the same were the Access Fee or any other amount payable under this Agreement are in arrears and payable by the Developer.

10. **Dealings**

10.1 **AT**

AT may, without obtaining the approval of the Developer or the Contractor, assign, novate or otherwise transfer any or all of its rights or obligations under this Agreement. AT will notify the Developer of any such transfer. The parties will do all things reasonably required to give effect to a transfer of AT's rights or obligations under this Agreement.

10.2 Developer

Each of the Developer and the Contractor is not entitled to, and will not, assign, novate, transfer or otherwise deal with any of its rights or obligations under this Agreement or any rights granted under any licence under this Agreement, except under a direct or tripartite agreement between the Developer, its secured creditor and AT or otherwise with the prior written approval of AT. It will be a condition of any such approval that the relevant transferee executes a form of undertaking, prepared by AT's solicitors at the cost of the Developer, undertaking to comply with and perform the obligations of the Developer or the Contractor (as applicable).

Any breach of this clause 10.2 by the Developer or the Contractor will be deemed to be the breach of an essential term of this Agreement entitling AT to cancel this Agreement immediately on written notice to the Developer.

10.3 Holding together of interests and assignment

The rights under any licence granted under this Agreement are personal to the Developer. The Developer may not assign any licence granted under this Agreement or otherwise purport to grant rights to any other party for the use and occupation of the Works or the Licensed Area except that the Developer may sublicense the Contractor to the extent necessary for the Contractor to undertake the Works in accordance with this Agreement.

11. Regulatory position

11.1 AT as road controlling authority

The Developer and the Contractor each acknowledges and accepts that AT has entered into this Agreement as the road controlling authority in relation to the Licensed Area and in its non-regulatory capacity. This Agreement does not bind AT or Auckland Council, in their regulatory capacity, in any way and any approval or agreement AT gives under this Agreement is not an approval or agreement in its or Auckland Council's regulatory capacity and vice versa. When acting in its regulatory capacity, AT and Auckland Council are entitled to consider all applications to them without regard to this Agreement. Neither AT nor Auckland Council will be liable to the Developer or the Contractor or any other person if, in their regulatory capacity, AT or Auckland Council declines or imposes conditions on any consent or permission that the Developer, the Contractor or any other person seeks for any purpose associated with this Agreement.

11.2 Regulatory and other capacities

The Developer and the Contractor each accepts that this Agreement does not:

- (a) restrict any regulatory or statutory function, power or responsibility of AT; or
- (b) require AT to influence or interfere with the exercise of any regulatory or statutory function, power or responsibility of any other person.

12. Costs

The Developer will promptly pay to AT, within 20 Working Days of receiving a tax invoice from AT, all costs and expenses incurred by AT (except to the extent expressly stated as being part of the Access Fees) in connection with:

- (a) the negotiation and preparation of this Agreement;

- (b) any default under this Agreement by the Developer or the Contractor including all costs of and incidental to the enforcement of any right and remedy of AT under or in connection with this Agreement or at law; and
- (c) any application made by the Developer or the Contractor for the agreement, approval or acceptance by AT under or in connection with this Agreement.

13. General

13.1 Warranties

The Developer and the Contractor each represents and warrants to AT that:

- (a) it has full power, capacity and authority to enter into and perform its obligations under this Agreement;
- (b) it has, and will continue to have, all the necessary consents and authorisations to enter into and perform its obligations under this Agreement; and
- (c) once executed this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

13.2 Auckland Council

The Developer and the Contractor each acknowledges and accepts that, for the purposes of Subpart 2 of Part 1 of the Contract and Commercial Law Act 2017, the provisions of this Agreement that confer, or purport to confer, a right or other benefit on Auckland Council are promises that are for the benefit of and enforceable by Auckland Council. However, the agreement of Auckland Council is not required for any amendment to this Agreement.

13.3 Notices

- (a) Any waiver, notice, approval, consent, request or communication which is given, submitted, sent, made, issued or served by a party under or in connection with this Agreement will only be effective and binding if it is:
 - (i) in writing;
 - (ii) addressed to the recipient of the notice at either:
 - (A) the mail address or email address from time to time specified by that party to the other party; or
 - (B) at the registered or published address of the recipient (in which case the notice may only be given by mail).
- (b) Any, notice, approval, consent, request or communication will be deemed to have been received:
 - (i) in the case of hand delivery, at the time of actual delivery to the recipient's address;
 - (ii) in the case of delivery by pre-paid post, on the 3rd Working Day after posting;

(iii) in the case of delivery by email, on receiving a response to the notice from the addressee (not being an automatically-generated response such as an out of office notification or read receipt).

(c) Any, notice, approval, consent, request or communication notice received or deemed to have been received after 5pm on a Working Day in the place to which it is sent, or on a day which is not a Working Day in that place, it will be deemed not to have been received until 9am on the next Working Day in that place.

13.4 **No interest**

The Developer acknowledges and accepts that the rights of the Developer under the Licence:

(a) are by way of contract only;

(b) do not create an interest in the Licensed Area;

(c) do not confer on the Developer any right of exclusive occupancy in the Licensed Area; and

(d) are subject at all times to AT accessing and using the Licensed Area from time to time as required by AT and without giving prior notice to the Developer.

13.5 **No caveat**

To the extent that the Developer may have a caveatable interest, the Developer is not entitled to and will not, and will not purport to, register a caveat on title to the land comprising the Licensed Area.

13.6 **Developer's agents**

The Developer will ensure that the Developer's Agents comply with all of the obligations of the Developer under this Agreement, including by procuring the Developer's Agents to provide any release required from the Developer (in the form reasonably required by AT) under this Agreement.

13.7 **Severance**

Any provision of this Agreement which is unenforceable for any reason will be ineffective and severed from the rest of this Agreement, to the extent of that unenforceability, but without invalidating the remaining provisions of this Agreement.

13.8 **Entire agreement**

This Agreement constitutes the entire agreement of the parties in relation to its subject matter and supersedes any other discussions, representations and understandings by or between the parties relating to such matters.

13.9 **Amendments**

No amendment to this Agreement will be effective unless it is in writing and executed by AT and the Developer and (to the extent that the amendment increases the liability of the Contractor under this Agreement) the Contractor.

13.10 **Partial invalidity**

The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under any other law or the legality, validity or enforceability of any other provision of this Agreement.

13.11 **Further assurances**

Each party will each sign, deliver and do all such acts, things and documents as may reasonably be required by the other party to give effect to this Agreement.

13.12 **Waiver**

No party is deemed to have waived any right under this Agreement unless the waiver is in writing. A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of that right.

13.13 **No merger**

The agreements, warranties representations, releases and indemnities set out in this Agreement will not merge on settlement or completion of the matters contemplated by this Agreement but will remain in full force and effect on and from settlement or completion.

13.14 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

13.15 **Governing law**

This Agreement is governed by New Zealand law.

Execution

Executed as an agreement.

Auckland Transport by

Authorised signatory

Print name

Developer by

Director

Print name

Witness to both signatures

Name

Occupation

Address

Director/Authorised signatory

Print name

Schedule 1: Works details

Item	Reference	Description
1.	Road	The road identified as the road in the Corridor Access Request for the Works. or _____ [name of road]
2.	Works	The works identified in the Corridor Access Request, and authorised by AT in the relevant Work Access Permit, as works to be undertaken by the Developer in the Licensed Area under this Agreement. or _____ [describe the works.]
3.	Licensed Area	The area within the Road identified as the licensed area in the Work Access Permit. or _____ [describe licensed area – eg by reference to a plan.]
4.	Construction Period	The period commencing on the Construction Commencement Date and ending on the Final Date for Completion.
5.	Construction Commencement Date	The date specified by AT in the Work Access Permit as the earliest date for the commencement of construction of Works in the Licensed Area. or _____ [date]
6.	Final Construction Commencement Date	The date specified by AT in the Work Access Permit as the last date on which construction of the Works may be commenced in the Licensed Area. or _____ [date]
7.	Final Date for Completion	The date specified by AT in the relevant Work Access Permit as the last date on which Works may be undertaken in the Licensed Area. or _____ [date]
8.	Defects Notification Period	The Defects Notification Period commences on the commencement of the Works and expires 2 years after the date of Completion of the Works.
9.	Bond	1. Amount: \$ _____ [amount]. 2. Expiry date (if any): _____ [date].
10.	Final Vesting Date	[Date] or [6 months prior to expiry of the Defects Notification Period] or [[Period] after Completion of the Works or the Final Date for Completion (whichever is earlier).]

11.	Additional costs, charges or fees (if any)	
12.	Additional AT Requirements (if any)	
13.	Address for AT	
14.	Address for Developer	

Schedule 2: Licence terms

1. Permitted use

The Licensee will not without the prior written approval of AT access or use or do anything or cause anything to be done in relation to the Licensed Area for any purpose other than for the Permitted Use.

2. Access fee

2.1 Payment

Unless otherwise agreed with AT, the Developer will pay the Access Fee to AT on or before the date on which the relevant Access Fee is due and payable and without set-off or deduction, by automatic bank payment.

3. Conduct of work

3.1 Make good obligations

If the Works are required to be undertaken to any part of the Road that is not within the Licensed Area, then the Developer will obtain AT's prior approval prior to undertaking such Works. The Developer will reinstate such parts of the Road to the requirements of AT immediately after completion of any works. No materials, plant or equipment will be abandoned or left in the Road but will be removed as soon as possible after the completion of the Works.

3.2 AT inspection

AT may at any time inspect the Works or the undertaking of any Works.

3.3 Utilities

The Developer will pay the cost of any alteration to or interference with all relevant Utilities resulting from the Works and will make good all damage done by the Developer to property belonging to or controlled by any other person and will pay full compensation to each affected person for any loss or damage caused by any interference by the Developer with that property or with those Utilities.

3.4 Waste

The Licensee will not bring about the cause of any waste on the Licensed Area or any contamination to the Licensed Area, and will not disturb the surface of the Licensed Area, apart from such disturbance as is necessary for the Works.

3.5 Fencing

The Developer accepts that section 3(1)(a) of the Fencing Act 1978 applies in relation to the Works or the Licensed Area, and the Developer will not require, under the Fencing Act 1978 or otherwise, AT to fence any boundary between the Licensed Area and any adjoining land, or to contribute to the cost of any such fence or any work on it.

4. Modifications required by AT or Auckland Council

4.1 Modifications

If:

- (a) the Works do not comply with the requirements of this Agreement;
- (b) the Work gives rise to a public or private nuisance;
- (c) the Works interfere with any Utilities or unreasonably interfere with any other lawful work; or
- (d) Auckland Council or AT considers removal or modification of the Works is required for safety, or for widening, realignment or reconstruction of the Road or the Licensed Area or to accommodate any other public work, -

then AT may on reasonable notice (being at least 10 Working Days) require the Developer (at its cost) to remove or modify (which includes relocation) the Works.

4.2 Default

If the Developer fails to comply with AT's notice then AT may undertake the modifications or removal at the cost of the Developer. The Works removed by AT will be released to the Developer upon payment of the costs incurred in its removal and storage.

4.3 No compensation

The Developer will not be entitled to any compensation or damages as a result of any modification or removal required by AT under this Agreement or at law.

4.4 Disposal by AT

AT may sell or dispose of the removed Works referred to in paragraph 4.1 if the Developer does not claim and take possession of the removed Works within one month of removal. The sale proceeds will firstly apply towards the payment of AT's costs and the balance (if any) will be paid to the Developer on application.

5. AT's right to enter and use the licensed area

Any licence granted by AT under this Agreement in no way limits the use of the Licensed Area by AT or any other person and:

- (a) AT, and all other persons authorised by AT, may enter onto any part of the Licensed Area at any time, and for any purpose. In exercising this right of entry, AT will use reasonable endeavours to ensure that no disturbance or inconvenience is caused to the Developer and the Developer's property on the Licensed Area; and
- (b) AT may use, occupy and deal with the Licensed Area without reference to the Developer, including granting rights to other persons.

6. Signage

The Developer may not place any advertising signage, or exhibit any advertising, on the Licensed Area. AT may remove such advertising signage or exhibit without notice and at the cost of the Developer.

Schedule 3: Bond form

Schedule 4: Contractor undertaking

DOC REF 23516108_1
Contractor undertaking

Auckland Transport, Private Bag 92 250 Auckland 1142. Phone 09 355 3553. Visit: www.AT.govt.nz
Trade/Contractor one-day parking permit application form